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Attorneys for Defendant Bank of America, N.A.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

JAMES L. BARKER, and  
JEANNE A. BARKER,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,  
ONEWEST BANK, CIT BANK, N.A.,  
FIRST AMERICAN TITLE COMPANY  
OF MONTANA, INC., Trustee,  
CHARLES PETERSON, Trustee

Defendants.

Case No. 1:17-cv-00021-SPW-TJC

**DEFENDANT BANK OF  
AMERICA, N.A.'S MOTION TO  
DISMISS**

Defendant Bank of America, N.A. ("Defendant" or "BANA"), by and through its counsel of record, hereby moves this Court for the dismissal of Plaintiffs' First Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), because Plaintiffs fail to state any claim against Defendant upon which

relief can be granted. The bases for this motion are set forth in a memorandum filed herewith. Defendant respectfully request that its motion be granted and that the First Amended Complaint be dismissed with prejudice. Pursuant to Local Rule 7.1(c)(1), counsel for Defendant contacted counsel for Plaintiff concerning this motion, but we have not heard back from counsel for Plaintiff. It is presumed that counsel for Plaintiff opposes this motion.

DATED this 23<sup>rd</sup> day of February, 2017.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Mark D. Etchart  
Mark D. Etchart

Attorneys for Defendant Bank of America, N.A.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of February, 2017, a true copy of the foregoing was served:

Via ECF to the following parties:

Karl Knuchel  
Karl Knuchel, P.C.  
PO BOX 953  
Livingston, MT 59047

/s/ Mark D. Etchart  
BROWNING, KALECZYC, BERRY & HOVEN, P.C.